

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FILED/ACCEPTED
FEB 12 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
ARKANSAS CABLE TELECOMMUNICATIONS)	
ASSOCIATION; COMCAST OF ARKANSAS, INC.;)	EB Docket No. 06-53
BUFORD COMMUNICATIONS I, L.P. d/b/a)	
ALLIANCE COMMUNICATIONS NETWORK;)	EB-05-MD-004
WEHCO VIDEO, INC.; COXCOM, INC.; and)	
CEBRIDGE ACQUISITION, L.P., d/b/a)	
SUDDENLINK COMMUNICATIONS,)	
)	
<i>Complainants,</i>)	
)	
v.)	
)	
ENTERGY ARKANSAS, INC.,)	
)	
<i>Respondent.</i>)	
)	

To: Office of the Secretary

Attn: The Honorable Arthur I. Steinberg
Office of the Administrative Law Judge

COMPLAINANTS' MOTION FOR PROTECTIVE ORDER

Pursuant to Part 1.313 of the Commission's Rules, 47 C.F.R. § 1.313, Complainants Arkansas Cable Telecommunications Association, Comcast of Arkansas, Inc., Buford Communications I, L.P. d/b/a/ Alliance Communications Network; WEHCO Video, Inc., CoxCom, Inc. and Cebriidge Acquisition, L.P., d/b/a Suddenlink Communications ("Complainants"), respectfully through their undersigned counsel, hereby move for a Protective Order.

Specifically, Complainants ask that the Hearing Officer quash the notice of deposition issued by Respondent Entergy Arkansas Inc. ("Entergy") to Geoffrey ("Jeff")

Buford, a Limited Partner for Buford Communications I, LP, dba Alliance Communications Network ("Alliance"). Entergy seeks to depose Mr. Buford although (1) the dispute between Entergy and Complainants is limited to and contained in the state of Arkansas; (2) Mr. Buford is a Limited Partner for Alliance based in Tyler, Texas; (3) Mr. Buford has no knowledge about this dispute; and (4) Mr. Buford's name has only been mentioned twice, both times during the deposition of former Alliance employee Bennett Hooks, in the millions of pages of documents produced or numerous depositions relating to this case. Entergy's attempt to depose Mr. Buford is harassment and, under applicable precedent, it is impermissible. Accordingly, Complainants respectfully request that the Hearing Officer order that Mr. Buford's deposition not be taken.

BACKGROUND

The dispute before the Hearing Officer centers on whether certain engineering standards involving pole attachments, which Entergy has attempted to impose on Complainants in Arkansas, are just and reasonable terms and conditions of attachment. Alliance is one of the cable operator entities involved in this litigation. However, Mr. Buford has no information regarding the pole attachment issues in this proceeding or the specific events that led to this dispute. See Declaration of Geoffrey Buford (attached hereto as Exhibit A). A review of the voluminous discovery—letters, email communications, deposition testimony, and other materials—produced by all the parties confirms that Mr. Buford's name has only been mentioned twice in connection with the case, both times during the deposition of Bennett Hooks, a former Alliance employee. The first reference to Mr. Buford was in response to the question of who

owned Alliance and the second in response to the question who was a principal investor. See B. Hook Dep. 15:13-23; 21:4-16 (Oct. 20, 2006) (attached hereto as Exhibit B).

Nevertheless, on December 18, 2007, Entergy served a notice of deposition on Mr. Buford. Complainants informally sought to resolve this matter. Based upon Entergy's response to Complainants' Motion For A Protective Order to quash the deposition notice to Stephan A. Burke, the Chief Operating Officer of Comcast Corporation and President of Comcast Cable Communications Management, LLC, Complainants reasonably believed that a resolution could be reached without the intervention of the Hearing Officer. See Entergy's Response to Complainants' Motion for A Protective Order at ¶ 3 ("Under the circumstances, Respondent EAI withdraws the notice for Mr. Burke's deposition. Moreover, Respondent EAI notes this matter could have been resolved by the affidavit of Mr. Burke and a telephone call to counsel for EAI"). As such, prior to filing this motion, Complainants contacted Entergy and asked that Entergy withdraw the deposition notice directed to Mr. Buford. See Email from J. D. Thomas to Steven Lancaster and Gordon Rather, counsel for Entergy, dated January 5, 2007 (attached hereto as Exhibit C). In that email Complainant's counsel stated that, "Jeff Buford, whom Entergy noticed, is in virtually the same position as Steve Burke of Comcast. That is, he now knows about the case, but nothing about the particulars." *Id.* Contrary to its assertion in its Response to Complainants' Motion For A Protective Order, counsel for Entergy indicated that Entergy intended to proceed with its deposition of Mr. Buford. Complainants were left with no alternative but to file the present motion.

ARGUMENT

The law is unequivocal. In cases like this one, where a top-ranking corporate official has no knowledge of or connection to a local dispute, the opposing party may not harass that official by hauling him in for deposition. The Hearing Officer should apply this clear precedent and enter an order forbidding Entergy from deposing Mr. Buford.

I. The Commission's Rules Vest Full Authority in the Hearing Officer to Quash Depositions That Would Harass the Opposing Party or Unnecessarily Drag Out the Proceeding

Section 1.313 of the Commission's Rules vests the power to issue Protective Orders in the Hearing Officer. 47 C.F.R. § 1.313. The Hearing Officer may issue any order consistent with the Commission's discovery rules. *Id.* Specifically, the Hearing Officer is empowered to order "[t]hat depositions shall not be taken" if such an order would "assure proper conduct of the proceeding or . . . protect any party or deponent from annoyance, expense, embarrassment or oppression." *Id.* The Commission has stated that the Hearing Officer has "broad authority" to employ this provision and that it will not reverse the Officer's discovery rulings absent a "strong showing" that the ruling is fundamentally mistaken. *Amendment of Part I, Rules of Practice and Procedure*, 91 F.C.C. 2d 527, ¶ 4 (1982).

The Commission's discovery rules, including Section 1.313, are derived in large part from the Federal Rules of Civil Procedure. *Amendment of Part 1 of the Rules of Practice and Procedure to Provide for Discovery Procedures* ("1968 Discovery Order"), 11 F.C.C.2d 185, ¶ 2 (1968). Where, as here, a significant body of case law has not grown up around a particular Commission rule, the Commission looks to

analogous federal rules and precedent for guidance. See, e.g., *APCC Services, Inc. v. TS Interactive, Inc.*, 17 FCC Rcd 25523, 25526, ¶ 7 (2002); *Complaint of L. Douglas Wilder and Marshall Coleman*, 12 FCC Rcd 4111, 4120, ¶ 27 (1997) (citing Fed. R. Civ. P. 37(b)(2)).

II. The Case Law Unequivocally Holds That Deposition of a Top Corporate Official is Not Permitted in Situations Like This One

Just like the Commission's rules, the Federal Rules empower judges to enter a Protective Order forbidding the taking of a deposition if such an Order would "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed R. Civ. P. 26(c). This rule commands the judge to limit discovery, including depositions, if its "burden or expense . . . outweighs its likely benefit," taking into account such factors as "the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues." *Id.* 26(b). Put another way, "[e]ven if relevant, discovery is not permitted where no need is shown, or compliance would be unduly burdensome, or where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information." *Miscellaneous Docket Matter No. 1 v. Miscellaneous Docket Matter No. 2*, 197 F.3d 922, 925 (8th Cir. 1999) (quoting *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990)) (alteration in *Miscellaneous Docket*).

Federal courts applying these rules have consistently held that they forbid a party from deposing the other side's top corporate officials, where those corporate officials have no connection to the dispute. See, e.g., *Thomas v. International Business Machines*, 48 F.3d 478 (10th Cir. 1995); *Evans v. Allstate Ins. Co.*, 216 F.R.D. 515 (N. D. Okla. 2003). The approach of cases like *Thomas* and *Evans* makes perfect sense: If

a top corporate executive could be deposed by anyone involved in litigation with any local branch or subsidiary of his corporation, he would spend the bulk of his career sitting before a video camera and a stenographer. Such a rule hardly would promote strong or efficient corporate governance. No doubt this explains why the holdings of Thomas and Evans have been repeated time and again in the federal courts, often in cases indistinguishable from the current dispute. See, e.g., *Community Fed. Sav. & Loan Ass'n v. FHLBB*, 96 F.R.D. 619, 621-22 (D.D.C.1983) (plaintiffs may not depose high-level decision makers removed from the daily subjects of the litigation unless they can demonstrate that the officials possess "unique personal knowledge" of the matter in issue); *M.A. Porazzi Co. v. The Mormaclark*, 16 F.R.D. 383, 384 (S.D.N.Y. 1951) (movant forbidden from deposing vice president of a shipping company with no knowledge of the issue in dispute; subordinates with equal or greater knowledge had to be deposed first and deposition of executive would only be permitted at a later time if he could contribute relevant information not already provided by those deponents).

The current situation falls neatly within this precedent. Just as in all the cases cited here, Mr. Buford has no connection to the dispute and has no information uniquely relevant to the dispute. See Ex. A, ¶ 3. He works in Tyler, Texas, and is a Limited Partner for Alliance. See Ex. A, ¶ 1-2. If Entergy were permitted to depose him, it would be a worthless endeavor and a waste of time valuable resources for everyone involved, but also would constitute an "undue burden" on Mr. Buford. Fed. R. Civ. P. 26(c).

As the 8th Circuit wrote, "[e]ven if relevant, discovery is not permitted where no need is shown, or compliance would be unduly burdensome, or where harm

to the person from whom discovery is sought outweighs the need of the person seeking discovery” *Miscellaneous Docket*, 197 F.3d at 925. Here, not only has no need been shown, not only would compliance be unduly burdensome, and not only would the harm to Mr. Buford outweigh the “need” of Entergy, but in fact there is no reason to believe that a deposition of Mr. Buford would lead to information relevant to the disposition of this matter. Indeed, Mr. Buford possesses no such information. In short, Entergy’s attempt to depose Mr. Buford is pure harassment and would inflict upon Mr. Buford “annoyance, expense, . . . [and] oppression.” 47 C.F.R. § 1.313.¹⁷ It should be forbidden.

III. Conclusion

For the foregoing reasons, Complainants respectfully request that the

¹⁷ Indeed, if the Commission’s rule on Protective Orders differs at all from the Federal Rules, the Commission’s rule is *less* forgiving of this sort of oppressive deposition, and the Hearing Officer should be even more willing to issue a Protective Order. See *1968 Discovery Order*, 11 F.C.C.2d 185, ¶ 4 (noting that the discovery period is typically shorter in Commission adjudications than in court, and counsel therefore should avoid seeking discovery where “the marginal value of the information may warrant restraint . . . in the interest of expedition”); *id.* (emphasizing that Hearing Officer is empowered to “prevent use of the [discovery] procedures for purposes of delay and to prevent the abuse of parties or witnesses”).

Hearing Officer grant the Motion for Protective Order and quash Entergy's notice of deposition to Mr. Buford.

Respectfully submitted,

ARKANSAS CABLE TELECOMMUNICATIONS
ASSOCIATION; COMCAST OF ARKANSAS,
INC.; BUFORD COMMUNICATIONS I, L.P.
D/B/A ALLIANCE COMMUNICATIONS
NETWORK; WEHCO VIDEO, INC.; COXCOM,
INC.; AND CEBRIDGE ACQUISITION, L.P.,
D/B/A SUDDENLINK COMMUNICATIONS

A handwritten signature in black ink, appearing to be "J. D. Thomas", written over a horizontal line.

J. D. Thomas
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Dominic F. Perella
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February 12, 2007

Its Attorneys

Exhibit A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)	
)	
ARKANSAS CABLE TELECOMMUNICATIONS)	
ASSOCIATION; COMCAST OF ARKANSAS,)	EB Docket No. 06-53
INC.; BUFORD COMMUNICATIONS I, L.P. d/b/a)	
ALLIANCE COMMUNICATIONS NETWORK;)	EB-05-MD-004
WEHCO VIDEO, INC.; COXCOM, INC.; and)	
CEBRIDGE ACQUISITION, L.P., d/b/a)	
SUDDENLINK COMMUNICATIONS,)	
)	
<i>Complainants,</i>)	
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v.)	
)	
ENTERGY ARKANSAS, INC.,)	
)	
<i>Respondent.</i>)	
<hr/>)	

To: Office of the Secretary

Attn: The Honorable Arthur I. Steinberg
Office of the Administrative Law Judge

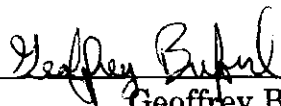
DECLARATION OF GEOFFREY BUFORD

I, Geoffrey Buford, do hereby state:

1. I am a Limited Partner for Buford Communications I, L.P. d/b/a/ Alliance Communications Network ("Alliance") based in Tyler, Texas.
2. On December 18, 2006, Entergy served upon my counsel a deposition notice directed to me, which was related to this proceeding.
3. I have no specific knowledge about the issues in dispute. This is a dispute involving Alliance's Arkansas based operations. With the exception of being

notified of the dispute, and preparing and executing this Declaration, I have had no communications with any Alliance employee or contractor or other person in connection with the particulars of this case. Other than the deposition notice (and this Declaration), I have not reviewed a single document pertaining to this litigation, nor do I otherwise have any information in my possession relevant to this dispute.

I declare under penalty of perjury of the law of the United States that this Declaration is true and correct.



Geoffrey Buford

Exhibit B

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

ARKANSAS CABLE TELECOMMUNICATIONS ASSOCIATION; COMCAST
OF ARKANSAS, INC.; BUFORD COMMUNICATIONS I, L.P. d/b/a
ALLIANCE COMMUNICATIONS NETWORK; WEHCO VIDEO, INC.;
COXCOM, INC.; and CEBRIDGE ACQUISITION, L.P., d/b/a
SUDDENLINK COMMUNICATIONS,
Complainants,

vs.

EB Docket No. 06-53

ENTERGY ARKANSAS, INC.,
Respondent.

ORAL DEPOSITION OF **BENNETT W. HOOKS, III**

TAKEN BEFORE Garold W. Pritsch, Certified Court
Reporter, LS Certificate No. 329, Bushman Court
Reporting, 620 West Third Street, Suite 302, Little
Rock, Arkansas 72201 on **October 20th, 2006** at Wright,
Lindsey & Jennings, 200 West Capitol Avenue, Suite 2300,
Little Rock, Arkansas commencing at 8:47 a.m.

GAROLD W. PRITSCH
BUSHMAN COURT REPORTING
(501) 372-5115

1 Arkansas since your construction company was formed?

2 A. No, sir.

3 Q. Is Alliance owned by Buford?

4 A. Can you clarify Buford?

5 Q. Certainly. This style, as lawyers call it --

6 A. Uh-huh.

7 Q. -- the heading of this complaint shows that one of
8 the complaining parties is Buford Communications doing
9 business as Alliance Communications Network. So I'm
10 asking, is Buford Communications the company that owns
11 Alliance?

12 A. No, sir, they're the managing company.

13 Q. Who owns Alliance?

14 A. Jeff Buford.

15 Q. Individually?

16 A. Yes, sir.

17 Q. And who is he?

18 A. He is -- well, I don't know how -- how do you want
19 me to explain who Mr. Buford is? He's just the man that
20 owns Alliance Communications. He's been in the business
21 for as long as I've been alive.

22 Q. Where does he live?

23 A. In Tyler, Texas.

24 Q. Who is Ben Hooks, who was CEO of Buford Media
25 Group?

1 another?

2 A. I believe both of them are owned by different
3 separate people.

4 Q. Do you know who owns Allegiance?

5 A. I think it's a conglomerate of investors.

6 Q. Who is the principal investor then in Alliance
7 Communications?

8 A. Jeff Buford.

9 Q. And what relationship is he to you?

10 A. There's no relationship.

11 Q. What percentage of ownership does he have, if you
12 know?

13 A. In Alliance?

14 Q. Yes.

15 A. As far as I'm aware, he owns 100 percent of the
16 company.

17 Q. I discovered something else that was of interest
18 to me in looking at the Alliance Communications Web
19 site. Do you -- or did you as -- as plant manager for
20 Alliance set up its Web site?

21 A. No, sir.

22 Q. Did you have that done?

23 A. Yes, sir.

24 Q. So you know what's on the Web site?

25 A. Presently, no, sir.

Exhibit C

Pryor, Sharese M.

From: Thomas, John D.
Sent: Friday, January 05, 2007 5:24 PM
To: 'slancaster@wlj.com'; Gordon Rather
Cc: 'Tiara King'; Lennon, Coleen S.; Perella, Dominic F.; Werner, Paul A.; Pryor, Sharese M.
Subject: Discovery Issues

Gordon and Steve --

We are still planning to file the motion today that I mentioned in my voicemail message and letter to Gordon yesterday, but in the meantime, there are a couple of administrative issues I wanted to raise.

1. Mike Beard, who works for Shaneco, has asked us to accompany him when he meets with Steve on Monday morning. Dom Perella from my office (whom you have not yet met) will be accompanying him. Our understanding is that this is just a delivery of documents and an interview, not a formal on-the-record deposition.
2. We have made contact with John Brinker, who used to work for Alliance. John now resides in Lynchburg, Virginia and has asked that any deposition be taken there. We are still in the process of locating the others and will be in touch shortly with updates.
3. Jeff Buford, whom Entergy noticed, is in virtually the same position as Steve Burke of Comcast. That is, he now knows about the case, but nothing about the particulars. Consistent with Entergy's recent Response to ACTA's motion to quash Steve Burke's deposition we would ask that Entergy withdraw Mr. Buford's deposition notice.

Thanks for your consideration.

DAVE THOMAS, PARTNER
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CERTIFICATE OF SERVICE

I, Christine Reilly, hereby certify that on February 12, 2007, a copy of the foregoing **COMPLAINANTS' MOTION FOR PROTECTIVE ORDER** was hand-delivered, and/or placed in the United States mail, and/or sent via electronic mail, postage prepaid, to:

Marlene H. Dortch (*Orig. & 6 copies*)
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

The Honorable Arthur I. Steinberg **
Administrative Law Judge
Office of the Administrative Law Judge
Federal Communications Commission
445 Twelfth Street, S. W.
Washington, D. C. 20554

Shirley S. Fujimoto, Esquire **
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Alex Starr**
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Michael Engel
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Enforcement Bureau
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Federal Communications Commission
Room CY-B402
445 12th Street, SW
Washington, D.C. 20554



Christine Reilly

* Served via U.S. Mail

** Also served via Electronic Mail